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**FISCAL IMPACT STATEMENT**

**LS 6977**

**BILL NUMBER:** HB 1298

**NOTE PREPARED:** Jan 9, 2004

**BILL AMENDED:**

**SUBJECT:** Abandoned Railroad Corridors.

**FIRST AUTHOR:** Rep. Friend

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
☒ **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill provides that certain statutes are applicable to the establishment of a recreational trail, regardless of: (1) when any part of the corridor was abandoned as a railroad right-of-way; (2) when the responsible party acquired title or a right to use any part of the corridor; or (3) whether the corridor is not included as part of the state's transportation plan or trail system plan or not funded by the state trail program.

The bill provides that a recreational trail operated in violation of certain statutes is a public nuisance. The bill provides that a governmental entity may not operate or participate in the operation of a recreational trail in violation of certain statutes. It also authorizes a taxpayer to seek an injunction to prevent a governmental entity from participating in a recreational trail that is operated in violation of the statutes. It requires a responsible party to include in the required filing the estimated dates of completion and operation of the trail, certain property tax information, and evidence of financial responsibility. The bill establishes a procedure for decommissioning a recreational trail. It establishes a procedure for dissolving a corridor that is not being used as a recreational trail.

**Effective Date:** Upon passage; July 1, 2004.

**Explanation of State Expenditures:**

*Establishment of a Recreational Trail.* Under current law, before a corridor may be converted for use as a recreational trail, the responsible party must file a description and map of the proposed trail; the properties for which the responsible party has and has not secured the legal right to use as a trail; the name and address of the responsible party; and a project concept statement detailed enough to generate project cost estimates. The responsible party must file this information with the DNR; and the executive of the municipality, if the

trail is located in a municipality. If the trail is not in a municipality, then it must be filed with the county executive. An environmental impact statement, if required by law, must also be submitted as well as an itemized cost estimate for the total project and funding sources. The information must specifically show expenses for trail security, fencing, maintenance, and drainage. The trail operation agreement must indicate that the responsible party must grant easements to persons who own adjacent property on both sides of the trail. The DNR, county, or municipality may also require inclusion of other provisions in the trail operation agreement.

*Under the proposal*, a corridor may not be used for a recreational trail until the above requirements have been met. Additionally, the responsible party must include in the information provided above the estimated dates of completion and the beginning of operation of the recreational trail. Also, if any part of the trail is or will become exempt from property taxes, the responsible party must include a description of each parcel as identified in the county's property tax records; the assessed value of each parcel; and the date of and the basis for the exemption from property taxes for each parcel. If the responsible party is not a governmental entity, the responsible party must provide evidence of financial responsibility that will be in effect until the recreational trail is decommissioned.

Based on the additional information requirements provided for in the proposal, the DNR may incur additional administrative expenses associated with checking to see that the requirements are met. The DNR should be able to absorb any additional expenses associated with these provisions given its current budget and resources.

*Petition to Decommission a Recreational Trail.* The proposal provides that the responsible party can petition for decommission of a trail for any reason. The county legislative body, a municipality, or property owner may file a petition with the DNR to decommission a trail if the responsible party fails to file the information required, fails to maintain the trail, or abandons the operation of the trail. In addition to the aforementioned reasons, the Transportation Corridor Planning Board (TCPB) may seek decommissioning if the corridor is needed for a transportation use. In all cases, a copy of the petition must be filed with the DNR, the executive of the municipality, the county executive, and the responsible party.

The petition must contain the name of the petitioner; the reason the petitioner seeks decommissioning; the name and address of the responsible party; and a description of the trail, including the name and address of the person that owns the fee simple title of each parcel. The petition must include the proposed disposition of the parcels; a statement of the responsible party's assets and liabilities relating to the trail; whether the responsible party is a party to any litigation concerning the trail; and the petitioner's plan for decommissioning the trail. The plan must include a description of the process to be used to clear title to real property occupied by the trail; how trail liabilities should be liquidated; how trail assets should be distributed; how pending or possible litigation should be settled; and a schedule for decommissioning the trail.

Not later than 60 days after receiving the petition, the DNR must publish a statement in the Indiana Register that indicates that a petition has been filed to decommission the trail. The statement must include the name and general location or map of the trail. The DNR must also submit a statement that an interested person may review and copy the petition at the DNR executive offices and that a person who objects to the petition must file objections with the DNR not later than 90 days after the publication date. Not later than 60 days after receiving the petition, the county or municipal executive involved must also publish a comparable statement in local publications and indicate that an interested person may review and copy the petition at the county or municipal office.

If the DNR does not receive an objection to decommissioning, the Natural Resources Commission must order that the trail be decommissioned. The Commission may also make other orders it considers appropriate under the circumstances.

The TCPB, the county or municipal executive, or property owner may file with the DNR an objection to the decommissioning. The basis for filing an objection must be that either the trail should continue operation; or the decommissioning plan is inadequate to assure orderly decommissioning, just liquidation of the assets and liabilities, protection of the interest of property owners, or protection of the public interest. If the DNR receives an objection to a petition, the DNR must hold a proceeding to determine whether the trail should be decommissioned.

The Natural Resources Commission must order that the recreational trail be decommissioned if a preponderance of the evidence indicates that the corridor is needed for a transportation use that the TCPB considers more important than a recreational trail; the responsible party has abandoned the trail or failed to maintain it and is not likely to be able to do so in a reasonable time; no other person has offered to become the responsible party; or the responsible party has failed and refuses to file required information.

If the Natural Resources Commission is not required to order decommissioning, the Commission may order the dismissal of the petition; that another person become the responsible party; or other remedial action.

A party to the proceeding may file an action in a court with jurisdiction to enforce an order of the Commission.

Impact on the DNR of the Decommissioning Provisions. The impact of the decommissioning provisions is indeterminable but will depend on the number of petitions that the DNR receives and the number of proceedings that the DNR must hold. As of January 2004, 21 trails were open; 21 were proposed; and 8 were under development. In total, the state had 332 miles of trails; 203 miles were proposed; 94 were open; and 35 were under development.

If the DNR needed to hire additional staff to implement the proposal, the funds and resources required could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. As of December 29, 2003, the DNR had 170 budgeted full-time vacant positions with total minimum possible salaries of \$4.7 M. Additionally, for FY 2003, the DNR reverted \$10.8 M to the General Fund. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Impact of the proposal on the TCPB and INDOT. Petitions and court actions may result in additional work and meetings for the TCPB. Travel expense for the nine-member Board has totaled about \$1,530 since the inception of the Board in 1996. Expenses average about \$383 per year. There may also be additional staff work for the Indiana Department of Transportation (INDOT) Railroad Division which provides support to the Board. Funds affected would include the State Highway Fund and any federal funds used for these purposes.

The Federal Highway Administration (FHWA) awards funds to the state and local communities for the development of and construction of trails. INDOT signs an electronic agreement with FHWA before it uses federal-aid highway funding, that it will comply with all terms and conditions set forth in Title 23. If INDOT

used federal-aid highway funds for a public use and later changed the purpose of the project for private use, the state would then be required to ask for reimbursement for those federal-aid funds that were used.

Impact of Provisions Pertaining to the Dissolution of a Corridor. The proposal also provides for the dissolution of a corridor which could also affect the TCPB, INDOT, and DNR. See *Explanation of Local Expenditures* below.

### **Explanation of State Revenues:**

### **Explanation of Local Expenditures:**

Establishing or Managing a Trail. The proposal requires responsible parties to submit additional information to the DNR or the local government involved when the responsible party is interested in establishing a trail. Requiring additional information could affect local expenditures if the local unit is the responsible party and must supply the information or if the local unit is being provided the additional information. In either case, the local unit may experience additional administrative expenses associated with either the provision or processing of additional information. The impact of these provisions is not expected to be significant.

The proposal also provides that a governmental entity may not operate or participate in the operation of a recreational trail that is in violation of the laws regulating the establishment and operation of a trail. A taxpayer who lives within the territory of a governmental entity has standing to seek an injunction to prevent the governmental entity from spending money on or participating in the operation of a recreational trail that is in violation. This provision could reduce local expenditures.

Public Nuisance s. The proposal provides that a recreational trail operated in violation of statute is a public nuisance and may be abated. An action to abate or enjoin a nuisance may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance. A civil action to abate or enjoin a nuisance may also be brought by an attorney representing the county, city, or town in which a nuisance exists. If a proper case is made, the nuisance may be enjoined or abated and damages recovered for the nuisance. This provision may result in additional expenses to the local unit. However, the local unit could recover damages.

Dissolution of a Corridor. If five years have passed since the railroad transferred interest in the corridor to other persons for any purpose other than railroad purposes and a responsible party has not filed the information required for a recreational trail, a person who owns property adjacent to a corridor may file an action in a circuit or superior court of any county through which the corridor passes to dissolve all or part of the corridor. The plaintiff must give notice of the action to all property owners who own adjacent property, all persons who have an interest in the corridor, and the TCPB. Any person entitled to receive notice is entitled to intervene as a party in the action.

The court must order dissolution of the corridor unless the court finds, by a preponderance of the evidence, that five years have not passed; the information for a recreational trail has been filed; a party objects to dissolution of the corridor and either the objecting party or another person is willing to become a responsible party; the TCPB objects; maintenance of the corridor is necessary for implementation of the Indiana Department of Transportation's Comprehensive Transportation Plan or the Department of Natural Resources's Trail System Plan; or either the DNR agrees to become the responsible party or INDOT agrees to maintain the corridor.

If the court orders dissolution of the corridor, an owner of any part of the dissolved corridor is entitled to use that property consistent with the owner's interest in the property. A party to an action is entitled to have the party's interest in any part of the corridor determined as it would be determined if the party had filed an action to quiet title.

Provisions relating to the dissolution of corridors could affect administrative expenses of local county courts. The impact is indeterminable and would depend on the number and nature of actions taken.

Also, see *Explanation of State Expenditures* above.

**Explanation of Local Revenues:**

**State Agencies Affected:** Department of Natural Resources; Department of Transportation.

**Local Agencies Affected:** Those units who are the managing entities of trails (a list is available from the Office of Fiscal and Management Analysis); County courts.

**Information Sources:** Steve Morris, Department of Natural Resources, Outdoor Recreation Division, 317-232-4751; Dan Mathis, Department of Natural Resources, Outdoor Recreation Division, 317-233-6904; Kathy Noland, Director of Public and Legislative Affairs for the Department of Transportation, 317-232-0694; Department of Natural Resources website; Jay Dumontele, Regional Deputy Director, Federal Highway Administration, 317-226-7482.

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